



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: T&A Painting, Inc.

File: B-228483

Date: December 4, 1987

DIGEST

A firm suspended from contracting at the time of bid opening is not an interested party to protest award under the solicitation since it would be ineligible to receive an award even if the protest were sustained; the Department of Defense Federal Acquisition Regulation Supplement requires that bids received from firms suspended from contracting with the government at the time of bid opening be rejected, even though a firm may no longer be suspended at the time of award.

DECISION

T&A Painting, Inc. protests any award to Sunset Enterprises, Inc., under Department of the Navy invitation for bids No. N62474-87-D-0402.

We dismiss the protest.

Bid opening for the solicitation was June 15, 1987. Award initially was made to T&A Painting on July 27, but the Navy canceled the award on August 13 after learning that the firm had been suspended from federal contracting by the Department of the Air Force, and appeared on the June 10, 1987 monthly Consolidated List of Debarred, Suspended and Ineligible Contractors issued by the General Services Administration (the "GSA List"). The Air Force's action, taken May 1, 1987, was based on a federal grand jury indictment returned against a principal of T&A Painting for criminal fraud in connection with obtaining and performing public contracts. The Department of Defense (DOD) Federal Acquisition Regulation (FAR) Supplement, 48 C.F.R. § 209.405(a)(1) (1986), calls for rejection of a bid received from a suspended contractor unless a written determination is made that there is a compelling reason to make an exception. See also FAR, 48 C.F.R. § 14.404-2(g). Since no written determination of exception was made in this case, the Navy concluded that the award to T&A Painting was improper.

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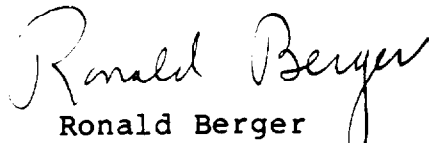
The protester argues that it should have been eligible for the award because the suspension was a mistake and was lifted on June 24. The fact that the protester was removed from the GSA List at some point after bid opening and is not currently on the List, however, is not necessarily dispositive; the DOD FAR Supplement establishes bid opening, not some later date, as the point at which a suspended bidder's eligibility for award is determined. Southern Dredging Co., Inc., B-225402, Mar. 4, 1987, 66 Comp. Gen. _____, 87-1 CPD ¶ 245. See J. M. Cashman, Inc., B-225558, Apr. 15, 1987, 87-1 CPD ¶ 411.1/ We find no basis for abandoning this rule in the circumstances here. Although T&A Painting was removed from the GSA List on June 24, and claims that its suspension was a mistake, we consider the suspension to have been adequately founded. As discussed, the suspension was based on a criminal indictment returned against a firm allegedly affiliated with T&A Painting; the indictment specifically cites this affiliation. A suspension need not be based on proven criminal guilt; rather, "adequate evidence" is all that is required, and an indictment for the type of activity here constitutes such adequate evidence. See 48 C.F.R. § 9.407-2(a) and (b). The Air Force's subsequent conclusion that T&A Painting's alleged affiliation did not warrant continuing the firm on the list did not change the fact that, at the time of bid opening, there was a reasonable ground for the suspension.

Our Bid Protest Regulations require that a protesting party be interested in order to maintain a protest before this Office. 4 C.F.R. § 21.1(a) (1987). A protester is not interested where it would not be eligible for award even if its protest were upheld. Royal Flush Janitorial Services, Inc., B-220410, Nov. 13, 1985, 85-2 CPD ¶ 552. As T&A Painting would be ineligible for the award here even if its

1/ The protester cites several of our prior decisions for the proposition that a suspended firm's eligibility for receiving an award should be determined at the time of award and not at the time of bid opening. However, those decisions were based on the pre-FAR rule; the change in the rule (to the one followed here) was recognized in our 1987 decision, Southern Dredging Co., Inc., B-225402, supra. The FAR still does not require rejection of a suspended firm's offer in a negotiated procurement; the procurement here is not negotiated. Id.

protest concerning the award to Sunset were successful, T&A Painting is not an interested party to protest this matter.

The protest is dismissed.


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General Counsel